

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

_____	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 4:11-cv-00077-RWS
AMEREN MISSOURI,	)	
	)	
Defendant.	)	
_____	)	

**UNITED STATES' BRIEF IN SUPPORT OF ITS  
MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

**Exhibit F**

**From:** [McLane, Bradford \(ENRD\)](#)  
**To:** [Yoon, Richard \(ENRD\)](#)  
**Subject:** FW: United States v. Ameren Missouri - privilege issues  
**Date:** Tuesday, September 30, 2014 5:58:06 PM

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**From:** McLane, Bradford (ENRD)  
**Sent:** Tuesday, September 30, 2014 4:42 PM  
**To:** 'Scott, David C.'; Williams, Jeannice D.  
**Cc:** Mock, Matthew B.; More, Joshua; Lofton, Jim (ENRD); Dunn, Jason (ENRD); Hanson, Andrew (ENRD); Ziza, Iva (ENRD); Woods, Claire (ENRD); HertzWu, Sara; Kakade, Seema; Froikin, Sara; Cooney, Nigel (ENRD)  
**Subject:** RE: United States v. Ameren Missouri - privilege issues

Dave,

We certainly wanted to minimize and reduce your logging burden, but we never reached any final agreement that your categories are acceptable across the board. In particular, we never agreed that you could set aside NSR-related UARG documents and not log them. At this time, all we are asking is that if any UARG documents are already (or were) on the log, that you leave them on the log (or add them back) and supplement the description. We are not asking you to add any UARG documents to the log. Any such an effort would be a poor use of effort at this time, since we will be presenting the broader issue to the Court for resolution.

Thanks

Brad

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**From:** Scott, David C. [<mailto:dscott@schiffhardin.com>]  
**Sent:** Tuesday, September 30, 2014 4:27 PM  
**To:** McLane, Bradford (ENRD); Williams, Jeannice D.  
**Cc:** Mock, Matthew B.; More, Joshua; Lofton, Jim (ENRD); Dunn, Jason (ENRD); Hanson, Andrew (ENRD); Ziza, Iva (ENRD); Woods, Claire (ENRD); HertzWu, Sara; Kakade, Seema; Froikin, Sara; Cooney, Nigel (ENRD)  
**Subject:** RE: United States v. Ameren Missouri - privilege issues

Brad, with all due respect, this was all addressed in the parties' categorical logging negotiations and agreement. It is not proper to attempt to renegotiate that agreement now. It sounds like you'll be bringing a motion on UARG documents, so we'll have to see what you say in that motion. The point of the e-mails below is that, to the extent that any UARG document ended up on Ameren's privilege log, that was inadvertent and we wanted to make you aware of that, just as you have done regarding hundreds of documents that you have determined are "nonresponsive" and should not have been logged (based on analysis you've never shared). You're emphasizing a UARG document inadvertently appearing on our log as if it's a "gotcha" situation. If you have a motion, then we can brief the overarching issue, but as Jeannice has clarified for you, any UARG document appearing on Ameren's log would be

inadvertent.

Regards,  
Dave

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**From:** McLane, Bradford (ENRD) [<mailto:Bradford.McLane@usdoj.gov>]  
**Sent:** Tuesday, September 30, 2014 3:10 PM  
**To:** Williams, Jeannice D.  
**Cc:** Mock, Matthew B.; Scott, David C.; More, Joshua; Lofton, Jim (ENRD); Dunn, Jason (ENRD); Hanson, Andrew (ENRD); Ziza, Iva (ENRD); Woods, Claire (ENRD); HertzWu, Sara; Kakade, Seema; Froikin, Sara; Cooney, Nigel (ENRD)  
**Subject:** RE: United States v. Ameren Missouri - privilege issues

Jeannice,

I am well aware of the context. We have no objection to either party removing truly non-responsive documents from the parties' privilege logs.

We object to you removing NSR-related UARG docs as "nonresponsive" or "irrelevant" when they clearly are responsive to our discovery requests. It is improper for you to remove a document from your privilege log that is responsive to our discovery requests based on your unilateral determination that such responsive documents are "irrelevant" to the case. You know that we view these documents as responsive to our discovery requests and that we never agreed that you could avoid logging them.

If you have removed or failed to log any NSR-related UARG documents based on your unilateral determination that such documents are "irrelevant" or "non-responsive" we again ask that you add them back to the log; clearly identify them as UARG documents; and make clear that you are asserting the common-interest privilege over them.

Brad

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**From:** Williams, Jeannice D. [<mailto:jdwilliams@schiffhardin.com>]  
**Sent:** Tuesday, September 30, 2014 3:00 PM  
**To:** McLane, Bradford (ENRD)  
**Cc:** Mock, Matthew B.; Scott, David C.; More, Joshua; Lofton, Jim (ENRD); Dunn, Jason (ENRD); Hanson, Andrew (ENRD); Ziza, Iva (ENRD); Woods, Claire (ENRD); HertzWu, Sara; Kakade, Seema; Froikin, Sara; Cooney, Nigel (ENRD)  
**Subject:** RE: United States v. Ameren Missouri - privilege issues

Brad,

Regarding your proposed record corrections in the second paragraph below, EPA was the first to do this in the challenge process, repeatedly bringing to our attention entries that you now deem "non-responsive" and which should not have been included on the log in the first instance, including last night when Nigel effectively removed yet another

131 log entries on that basis (that is in addition to hundreds more you've effectively removed in the earlier meet and confer process). Were you aware of this?

Also, as we have indicated when the logs were first produced to you, "In the event Ameren learns that its privilege log contains any statements that are inaccurate or incomplete, we will notify you of the same, and promptly take steps to correct any errors." (June 24, 2014 LTR from J. Williams to N. Cooney). Other errors regarding non-responsive documents inadvertently included on the log have been brought to your attention, including on September 9 (see correspondence with Iva Ziza, on which you were copied).

Thanks,

Jeannice

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**From:** McLane, Bradford (ENRD) [<mailto:Bradford.McLane@usdoj.gov>]

**Sent:** Tuesday, September 30, 2014 1:19 PM

**To:** Williams, Jeannice D.

**Cc:** Mock, Matthew B.; Scott, David C.; More, Joshua; Lofton, Jim (ENRD); Dunn, Jason (ENRD); Hanson, Andrew (ENRD); Ziza, Iva (ENRD); Woods, Claire (ENRD); HertzWu, Sara; Kakade, Seema; Froikin, Sara; Cooney, Nigel (ENRD)

**Subject:** RE: United States v. Ameren Missouri - privilege issues

Jeannice,

Thanks for getting back to me. A couple of corrections to the record seem to be in order. You stated below as follows: "As you know, documents related to UARG have no relevance to the case." We are aware that this is your position. As you know, we disagree with your position in this regard, and will be filing a motion on this subject matter today.

Also, for the record, we disagree with your approach of removing documents from the privilege log that you assert are not relevant. This is the first that I have heard of Ameren taking such an approach. The entire purpose of narrowing the privilege logs on both sides was to reduce burdens, not to create a means by which Ameren can hide documents that are responsive to the search terms Ameren used based on a unilateral claim that the document is irrelevant. Please do not remove this document from the privilege log and if you have removed any other "irrelevant documents", including UARG please add them back to your log.

Thanks,

Brad

Bradford McLane  
Trial Attorney  
Environmental Enforcement Section  
Environment & Natural Resources Division  
United States Department of Justice

**Regular mail:** PO Box 7611, Washington, DC 20044-7611  
**Overnight mail:** 601 D Street N.W., Washington, DC 20004  
Phone: (202) 305-0544  
Facsimile: (202) 616-6584

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**From:** Williams, Jeannice D. [<mailto:jdwilliams@schiffhardin.com>]  
**Sent:** Tuesday, September 30, 2014 2:10 PM  
**To:** McLane, Bradford (ENRD)  
**Cc:** Mock, Matthew B.; Scott, David C.; More, Joshua; Lofton, Jim (ENRD); Dunn, Jason (ENRD); Hanson, Andrew (ENRD); Ziza, Iva (ENRD); Woods, Claire (ENRD); HertzWu, Sara; Kakade, Seema; Froikin, Sara; Cooney, Nigel (ENRD)  
**Subject:** RE: United States v. Ameren Missouri - privilege issues

Brad,

Thank you for your email, which we understand further narrows the privilege log entries you are raising from the 87 entries we discussed last Thursday to the 27 entries in the PDF you just sent us. We were in the process of responding to the myriad questions you raised last Thursday, but now we are adjusting to the narrowed set of 27 you identified last night.

After further review, we will remove the following entries from our privilege log and will produce the referenced documents:

AMPR1000403985  
AMPR1000403997  
AMPR1000403987  
AMPR1000404337

You also asked today whether Ameren has designated its privilege log under the protective order. Ameren has not.

Finally, you note that one of the documents on your list of 27 log entries "is a UARG document." As you know, documents related to UARG have no relevance to the case. The inclusion of "a UARG document" on Ameren's privilege log was inadvertent. As EPA has done on many occasions – including again just last night – that privilege log entry is withdrawn.

Thank you,

Jeannice

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**From:** McLane, Bradford (ENRD) [<mailto:Bradford.McLane@usdoj.gov>]  
**Sent:** Monday, September 29, 2014 7:55 PM  
**To:** Scott, David C.; Williams, Jeannice D.; More, Joshua; Mock, Matthew B.  
**Cc:** ENRD-Ameren Case Emails; Lofton, Jim (ENRD); Dunn, Jason (ENRD); Hanson, Andrew (ENRD); Ziza, Iva (ENRD); Woods, Claire (ENRD); HertzWu, Sara; Kakade, Seema; Froikin, Sara; Cooney, Nigel (ENRD)  
**Subject:** United States v. Ameren Missouri - privilege issues

David and Jeannice,

Thanks for your time on Thursday meeting and conferring with respect to Ameren's privilege log. After our meet and confer we explained that we have a looming deadline to bring any privilege log challenge. That deadline is tomorrow. We asked that you share any information to assist us in assessing Ameren's privilege claims by last Friday. We have not received any communication from you with any additional information.

Based on our meet and confer and our subsequent review, we have further narrowed the universe of documents that we are challenging from Ameren's log. Attached are the 27 documents that we expect to challenge based on Ameren's failure carry its burden to justify the asserted privileges over these documents. We consider our meet and confer obligations fully discharged with respect to these documents. Additionally, we understand that one of the documents on the list is a UARG document. I note that we expect to bring a separate challenge to Ameren's claim that UARG documents are not relevant to this action and its assertion of the common interest privilege over these documents.

Sincerely,

Brad

Bradford McLane  
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